

# COUNTY OF YORK

## MEMORANDUM

**DATE:** June 9, 2005 (BOS Mtg. 6/21/05)

**TO:** York County Board of Supervisors

**FROM:** James E. Barnett, County Attorney

**SUBJECT:** Approval of Ground Lease Agreement of certain waterfront property to Yorktown Freight Shed, LP

The old Yorktown post office building, now newly renovated and more commonly known as the Yorktown Freight Shed, has since 2001 been owned by Yorktown Freight Shed, LP, a limited partnership which was formed for the purpose of assisting in the realization of transferable tax credits under federal and state tax statutes which allow for the creation of such credits in connection with the renovation of historic buildings. The Freight Shed building qualified as just such a historic building, and at a cost of approximately \$1,000,000, it now stands nearly ready to be offered for rent by its current owner for receptions and other events. I will not repeat in this memorandum the details of the Historic Building Tax Credit Renovation Program, but suffice it to say by way of summary that the limited partnership which now owns the building recently sold its limited partnership interest to a private investor, and will continue to maintain title to the building for a period of something in excess of seven years, at which time by virtue of a default on a loan to the Economic Development Authority of York County (EDA), title to the building will ultimately be conveyed to the County.

At the time title to the building was conveyed to the limited partnership, the law firm of Kutak Rock, tax counsel for purposes of this transaction, suggested that at some significant point it might be advisable for the County to enter into a formal lease agreement with the limited partnership for that portion of the County's real estate on which the building is located. That time has arrived, and attached is a draft Ground Lease Agreement whereby the County would lease to Yorktown Freight Shed, LP the very property on which the building sits. You may recall that the County earlier entered into a lease agreement with the EDA (then known as the Industrial Development Authority) of all of the property involved in the Riverwalk Landing economic development project, subject however to the reserved right of the County to enter into a lease to the limited partnership of the Freight Shed building site. As you can see, the proposed Ground Lease Agreement calls for the limited partnership to pay a nominal annual rent of \$100.00, which shall be a "net" rental amount with the partnership paying all other costs and expenses in maintaining the building, which would include taxes, insurance premiums, and utility charges. The term of the lease is for 40 years, although it is anticipated that the lease will effectively terminate on or about July 1, 2012. It is on that date that the limited partnership's note to the EDA in the amount of \$1,000,000 will become due and payable, and the limited partnership will be expected to convey all of its assets, including the building, to the EDA, and the EDA in turn will convey them to the County, in payment of the partnership's note to the EDA, and the EDA's note in the same amount to the County. The proposed Ground Lease Agreement contains terms which are

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typical of a commercial lease, including the tenant's obligation to indemnify and hold harmless the County from liability.

This matter has been advertised for a public hearing as is generally required of leases and other conveyances of interest in real estate by the County. Attached is proposed resolution R05-120, which will authorize the County Administrator to execute a Ground Lease Agreement in accordance with the attached draft. In order to bring this phase of the rehabilitation and operation of the Freight Shed to a conclusion, I recommend its adoption.

Barnett/3440:swb

Attachment

- Ground Lease Agreement
- Resolution R05-120